

BEFORE LINDA McCULLOCH, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF MONTANA

JACK TODD,)	
)	
Appellant,)	OSPI 305-06
)	
v.)	DECISION AND ORDER
)	
BOB ANDERSON, SUPERINTENDENT;)	
GREG McGINNIS, TRUSTEE; JOHN)	
GOOD, TRUSTEE; RICHARD BAILEY,)	
TRUSTEE; GAR WOOD, TRUSTEE; JAY)	
RITLAND, TRUSTEE; DEAN SCHULER,)	
TRUSTEE; and LIZ WITT, Trustee,)	
)	
Respondents.)	

Having reviewed the record and considered the parties' briefs, the Superintendent of
Public Instruction issues the following Decision and Order.

DECISION AND ORDER

The Chouteau County Superintendent's Contested Case Determination is hereby
affirmed and Appellant's appeal is dismissed.

PROCEDURAL AND FACTUAL HISTORY

Appellant is an elector in the Fort Benton School District.

Respondents are the superintendent and trustees of the Fort Benton School Board.

1 Appellant was notified on December 5, 2005 that the superintendent had recommended
2 that he be suspended from the District's property and that the trustees would discuss the issue at
3 their December 13, 2005 meeting.

4 Appellant was present at the December 13, 2005 meeting and was suspended for a period
5 in excess of one year.

6 Appellant appealed the board's decision to the County Superintendent of Schools on
7 January 11, 2006.

8 Following receipt of Appellant's appeal and the district's response, County
9 Superintendent Larry Stollfuss dismissed Appellant's claims of libel, defamation of character and
10 discrimination for lack of jurisdiction. Superintendent Stollfuss also dismissed Appellant's claim
11 of violated rights for failure to identify any of those rights. Superintendent Stollfuss reserved
12 Appellant's claim of violation of due process and ordered Appellant to provide in writing, "clear
13 and concise references to the particular sections of the statutes, rules and policies involved in his
14 appeal."

15 Appellant filed a supplemental appeal and the District filed its supplemental response.

16 On March 9, 2006 Superintendent Larry Stollfuss issued a Contested Case Determination
17 holding that the appeal "as submitted is dismissed for failure to meet the requirements as a
18 contested case under 10.6.102 ARM.

19 Appellant filed his appeal of that decision on April 5, 2006.

20 **ISSUE ON APPEAL**

21 The issue on appeal is whether or not the County Superintendent had jurisdiction over the
22 subject appeal.

23 **STANDARD OF REVIEW**

24 An administrative forum has power to determine initially whether it has jurisdiction.
25 *Wilson v. Dept. of Public Service Reg.*, 260 Mont. 167, 858 P.2d 368, (1993).

1 **FINDINGS OF FACT**

2 1. Appellant is an elector in the Fort Benton School District.

3 2. Respondents are the Superintendent and Trustees of the Fort Benton School
4 District.

5 3. Appellant timely appealed a decision of the Fort Benton School District Board of
6 Trustees.

7 4. County Superintendent Stolfuss dismissed various allegations in Appellant's
8 appeal citing a lack of jurisdiction.

9 5. County Superintendent Stolfuss allowed Appellant additional time in which to
10 provide in writing, "clear and concise references to the particular sections of the statutes, rules
11 and policies involved in his appeal."

12 6. County Superintendent Solfuss determined that Appellant had failed to reference
13 any specific statute in Title 20, MCA that guaranteed [Appellant] due process of any kind and
14 failed to reference any specific section of School District Policy that guaranteed [Appellant] a
15 right of due process before the School Board.

16 **APPLICABLE LAW**

17 ARM 10.6.101 SCOPE OF RULES (1) These rules govern the procedure for
18 conducting all hearings on school controversy cases arising under the provisions of Title 20,
19 MCA, before the county superintendent or the county transportation committee, and all appeals
20 to the State Superintendent of Public Instruction.

21 ***

22 (b) All controversies arising under any other provision of Title 20, MCA for which a
23 procedure for resolving controversies is not expressly prescribed shall be governed by these
24 rules.

25 ARM 10.6.102 SCHOOL CONTROVERSY MEANS CONTESTED CASE

(1) Contested case means any proceeding in which a determination of legal rights, duties
or privileges of a party is required by law to be made after an opportunity for hearing.

10.6.105 COMMENCEMENT OF ACTION/REQUIREMENTS OF THE NOTICE OF
APPEAL ***

(2) When a party appeals to the county superintendent, the notice of appeal must include:

1 (d) a statement setting forth the basis for the contested case that the county
2 superintendent has proper jurisdiction;

3 (e) references to the particular sections of the statutes and rules involved.

4 ***

5 (4) Failure of any party to take any step other than the timely filing of a notice of appeal
6 does not affect the validity of the appeal but is grounds for such action as the county
7 superintendent deems appropriate, which may include dismissal of the appeal.

8 County superintendents do not have jurisdiction to rule on issues outside of Title 20,
9 Montana Code Annotated.

10 “County superintendents also do not have the jurisdiction to rule on all matters of
11 law that somehow may be related to schools. County superintendents have the power to
12 conduct administrative hearings to issue findings of fact and conclusions of law in areas
13 that are within their field of expertise under Title 20. They do not have the jurisdiction to
14 rule on questions of law outside of Title 20. For example, they cannot hear tort claims
15 and they do not hear actions arising out of the Montana Human Rights Act.” *Brott v.*
16 *School District No. 9, Browning Public Schools*, OSPI No. 234-94.

17 **CONCLUSION OF LAW**

18 Appellant has not identified any statutes in Title 20, MCA which he claims the District
19 has violated which would afford the Chouteau County Superintendent jurisdiction to hear and
20 rule on this appeal.

21 **DECISION AND ORDER**

22 The Chouteau County Superintendent's Contested Case Determination is hereby
23 affirmed and Appellant's appeal is dismissed.

24 **MEMORANDUM OPINION**

25 In this case Appellant did not identify in his appeal what statutes, rules or school policies
he alleges were violated by the District. He finally does identify the statutes in his Reply to Brief
dated June 27, 2006 and admits that the statutes that he feels were violated were not in Title 20,
but are in Title 2, Title 44 and Article II(9) of the Montana Constitution.

The former State Superintendent held in *Brott v. School district No. 9, Browning Public*
Schools, OSPI No. 234-94 and this State Superintendent, in *Ronan School District Board of*

1 Trustees v. Dupuis, OSPI 296-03, has agreed that County Superintendents do not have
2 jurisdiction over controversies outside of Title 20, Montana Code Annotated.

3 The Chouteau County Superintendent properly dismissed Appellant's appeal for lack of
4 jurisdiction.

5 DATED this 24th day of August, 2006.

6
7 /s/ Linda McCulloch
8 Linda McCulloch
9 Superintendent of Public Instruction

10 **CERTIFICATE OF SERVICE**

11 THIS IS TO CERTIFY that on this 24th day of August, 2006, I caused a true and exact
12 copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

13 **JACK TODD**
14 **P.O. BOX 185**
FORT BENTON, MT 59442

15 **DEBRA A. SILK**
16 **& ROBERT STUTZ**
17 **MONTANA SCHOOL BOARDS' ASSOCIATION**
1 SOUTH MONTANA AVENUE
HELENA MT 59601

18 **LARRY STOLLFUSS**
19 **COUNTY SUPERINTENDENT**
20 **CHOUTEAU COUNTY COURTHOUSE**
FORT BENTON, MT 59442

21 /s/ **Catherine K. Warhank**
22 **CATHERINE K. WARHANK**
23 **Chief Legal Counsel**
24
25